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SUBJECT: UKRAINE: TIP ACTION GUIDE TO COMBAT TIP
(2008-2009)

REF: GONZALES-MAYHEW 10/16/2008 EMAIL

11. This is an action request (see para 5).

12. The 2008 Trafficking in Persons Report rates countries as Tier 2 when host governments are not meeting the minimum standards to combat trafficking in persons (TIP) as defined by the Trafficking Victims Protection Act (TVPA), but are making significant efforts to do so. Remaining on Tier 2, however, is not guaranteed; governments must continue to combat TIP and especially address areas that need further work. All Tier 2 countries will move to Tier 1 if and when they evidence satisfaction of all of the minimum standards. Tier 2 countries are also subject to slipping to Tier 2 Watch List or Tier 3 if they do not continue to make significant efforts to meet the minimum standards from one year to the next.

13. Please keep in mind the TIP Report measures host government efforts. To be useful for tier placement purposes, there should be a concrete role or tangible value-added by a host government in activities by NGOs, international organizations, or posts.

14. The following explains steps the government needs to take in order to fully comply with the Minimum Standards for the elimination of trafficking, and therefore qualify for a Tier 1 ranking, and offers suggestions to address specific areas of concern highlighted in the 2008 TIP Report. Legal standards are excerpted from the Trafficking Victims Protection Act, as amended. Implementation Principles are excerpted from guidance issued in 07 State 150188 (October 29, 2007) and are not specific to any country or region. Country specific points are not exhaustive, but offer steps and possible ways to address specific areas of concern. The Department assesses government efforts each year. All governments must show concrete evidence of serious and sustained efforts in eliminating severe forms of trafficking from the previous year. Tier ranking determinations will be based on the government's efforts to comply with the Minimum Standards to Combat TIP during the April 2008 - March 2009 reporting period.

15. Begin action request: Post is requested to explain to the host government the areas of specific concern noted in the TIP Report and why the government failed to meet the minimum standards (and thus did not meet the requirements for Tier 1 placement). Post may offer steps in para 6 to the host government as possible ways to address specific areas of concern. While the list is not exhaustive, it should focus the host government on deficiencies in meeting the minimum standards and examples of ways to overcome them. As every year, the Department will weigh the government's level of support and participation in reported activities, as well as the efficacy and sustainability of government actions, in light of its resources and capabilities.

Begin Action Guide and internal numbering.

11. Legal Framework: The government should criminally prohibit

TIP and punish such acts.

(A) For TIP crimes, punishment should be prescribed that is commensurate with that for grave crimes, such as forcible sexual assault.

(B) For TIP crimes, punishment should be prescribed that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense.

Implementation Guideline: At minimum, governments must criminalize and prescribe penalties for all forms of trafficking relevant in the country, including forced labor. This must include the elements of "severe forms of trafficking in persons" -- force, fraud, and coercion. Although desirable, this need not be accomplished through a comprehensive law, so long as relevant elements of trafficking, specifically including fraud/deception and coercion along with force, are covered by the country's laws.

Sanctions for sex trafficking should be on par with rape. The prescribed penalties for sex trafficking crimes or trafficking involving rape, kidnapping or death should be substantially similar to those for rape, taking into account the full range of sentences available. Consistent with the UN Convention Against Transnational Organized Crime, criminal penalties to meet this standard should include a maximum of at least four years deprivation of liberty, or a more severe penalty.

COMPLIANCE: The government was in full compliance as reported in the 2008 TIP Report.

Positive results that should be maintained:

-- The government prohibits all forms of trafficking through Article 149 of its Criminal Code, which prescribes penalties that are sufficiently stringent and commensurate with those prescribed for other grave crimes, such as rape.

12. Prosecution and other Law Enforcement Efforts: The government should show serious and sustained efforts to combat TIP by vigorously investigating and prosecuting TIP acts, and convicting and sentencing persons responsible for such acts.

(A) The government must provide data regarding investigations, prosecutions, convictions, and sentences, consistent with its capacity to do so, or it shall be presumed not to have vigorously investigated, prosecuted, convicted or sentenced such acts.

Implementation Guideline: All governments, consistent with their capacity to do so, are required to submit full comprehensive data on trafficking enforcement actions, including length of sentences actually imposed on convicted traffickers, as evidence of their vigorous law enforcement efforts. Imposed sentences should involve significant jail time, with a majority of cases resulting in sentences on the order of one year imprisonment or more, but taking into account the severity of an individual's involvement in trafficking, imposed sentences for other grave crimes, and the judiciary's right to hand down punishments consistent with that country's laws. Convictions obtained under other criminal laws and statutes can be counted as trafficking if the government verifies that they involve trafficking offenses.

COMPLIANCE: The government was fully compliant as reported in the 2008 TIP Report.

Positive results that should be maintained and/or exceeded:

-- In 2006, Ukraine made progress in prosecuting and punishing trafficking offenses. This year, the government completed 82 criminal investigations and arrested 56 people on trafficking charges. The Interior Ministry reported that the number of prosecutions for labor trafficking increased from 3 in 2006 to 23 in 2007. Overall, the government

prosecuted 95 cases resulting in 83 convictions of trafficking offenders under Article 149. Of the total number of persons convicted, 59 were placed on probation and not subjected to imprisonment. In June 2007, the Prosecutor General ordered prosecutors to take a more aggressive posture with regard to sentencing convicted trafficking offenders and to appeal every case in which a judge ordered probation rather than jail time. As a result, during the second half of 2007, the share of convicted trafficking offenders receiving jail time rose to 44 percent, up from 36 percent during the first half of the year. The government financed regular, formal training seminars for Interior Ministry anti-trafficking officers throughout Ukraine. The Ukrainian Academy of Judges and the Academy of Prosecutors, with sponsorship from the OSCE, participated in eight seminars for 203 judges and prosecutors from around the country on victim related issues and sensitivity training for trafficking-related cases. The government cooperates with other governments on anti-trafficking law enforcement efforts but acknowledged the need to simplify procedures for mutual legal assistance between Ukraine and trafficking destination countries.

Recommended measures to ensure the country continues to fully comply with Minimum Standards:

- Continue efforts to ensure that convicted traffickers serve significant jail time.
- Continue efforts to ensure that trafficking offenses are fully prosecuted and punished.
- Continue trafficking-specific training for prosecutors and judges
- Issue official guidelines for judges on how to handle TIP cases in full compliance with relevant international norms and standards

13. Victim Protection and Assistance: The government should demonstrate serious and sustained efforts to combat TIP by protecting TIP victims and encouraging their assistance in the investigation and prosecution of their traffickers. Protection should include:

- (A) provisions for legal alternatives to victims' removal to countries in which they would face retribution or hardship.
- (B) ensuring that victims are not inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts that were committed as a direct result of being trafficked.

Implementation Guideline: Critical factors considered in whether a country fully satisfies this part of the minimum standards are: (1) Formal, systematic screening procedures that proactively identify victims and guide law enforcement and other front line responders in the process of victim identification. (2) Shelter, health care, and counseling should be available to victims, allowing them to recount their trafficking experience to trained social counselors and law enforcement at a pace with minimal pressure. Shelter and care may be provided in cooperation with NGOs, but part of the government's responsibility includes funding and referral to NGOs providing services; to the best extent possible, trafficking victims should not be held in immigration detention centers, or other detention facilities. Factors also considered and strongly recommended for favorable placement are: (1) Victim/witness protection, rights and confidentiality; i.e., governments should ensure that victims are provided with legal and other assistance and that, consistent with its domestic law, proceedings are not prejudicial to victims' rights, dignity or psychological well-being; and that victims are provided information in a language they understand. (2) Source and destination countries share responsibility in ensuring the safe, humane and, to the extent possible, voluntary repatriation/reintegration for victims. At a minimum,

destination countries should contact a competent governmental body, NGO or IO in relevant source country to ensure that trafficked persons who return to their country of origin are provided with assistance and support necessary to their well-being. Trafficking victims should not be subjected to deportations or forced returns without safeguards or other measures to reduce the risk of hardship, retribution, or re-trafficking.

COMPLIANCE: The government was not fully compliant as reported in the 2008 TIP Report.

Positive results that should be maintained and/or exceeded:

-- Law enforcement agencies referred 456 victims to NGOs for assistance. Through donor-sponsored programs and some government services, foreign and domestic victims of trafficking in Ukraine receive shelter, medical, psychological, legal, and job placement assistance. The Kherson regional government allocated \$20,170 to anti-trafficking activities including support of a reintegration center. Ukraine does not punish victims for unlawful acts committed as a direct result of being trafficked. Courts in the Ivano-Frankivsk region are implementing a pilot program to develop a modern witness protection program.

Recommended measures to ensure that the country fully complies with Minimum Standards:

-- Ukraine's protection and reintegration efforts remained heavily reliant on international donor funding. The government should increase funding for victim protection and assistance, especially for maintenance of shelters for victims.

-- Develop formal, systematic procedures for government officials to identify potential trafficking victims among vulnerable populations (such as street children and women in prostitution) as well as among individuals who travel abroad from Ukraine, and individuals who were involuntarily returned to Ukraine, and to refer victims to service providers.

-- A weak witness protection system and a bias against sex trafficking victims discourage many victims from testifying in court. Develop policies to encourage victims to assist in the investigation and prosecution of traffickers.

-- The government should provide foreign victims with legal alternatives to removal to countries in which they may face hardship or retribution.

14. Prevention: The government should demonstrate serious and sustained efforts to combat TIP by adopting measures to prevent TIP. Measures such as:

(A) steps to inform and educate the public, including potential victims, about the causes and consequences of TIP,

(B) measures to reduce the demand for commercial sex acts and for participation in international sex tourism by nationals of the country,

(C) measures to ensure that its nationals who are deployed abroad as part of a peacekeeping or other similar mission do not engage in or facilitate severe forms of trafficking in persons or exploit victims of such trafficking,

(D) measures to prevent the use of forced labor or child labor in violation of international standards.

Implementation Guideline: The government should provide/fund a hotline or similar mechanism that offers victims and potential victims assistance/information about TIP. Per the new amendments to the Minimum Standards, starting with the April 2007- March 2008 reporting period to be covered in the 2008 TIP Report, countries should, for example where applicable: (1) Reduce demand for commercial sex acts:

Implement or support some form of visible awareness campaign that educates the clients of the sex trade (and potential sex trafficking victims) if the country has a significant sex trafficking problem, or a campaign that targets those who form the demand for victims of forced labor about the nature of the relevant form of TIP. Nations with legalized prostitution should make additional efforts to proactively identify TIP victims among those in prostitution in the legalized sex trade. This includes the systematic and sensitive screening of persons in the legalized sex trade.

(2) Address child sex tourism: Countries that have a significant number of nationals traveling abroad as child sex tourists should undertake an awareness campaign that targets tourists traveling to known child sex tourism destinations.

(3) Address trafficking and exploitation committed by multinational peacekeepers: Governments with more than 100 troops on peacekeeping or other similar missions abroad should provide anti-TIP training for these troops (directly or through multilateral efforts), and should investigate and, if appropriate, prosecute any allegations of trafficking crimes or crimes of facilitating trafficking or exploiting trafficking victims committed by these troops abroad and referred to it by the UN or another competent organization.

COMPLIANCE: The government was partially compliant as reported in the 2008 TIP Report.

Positive results that should be maintained and/or exceeded:

-- The government made progress in preventing trafficking in persons during the reporting period. In 2007, the government broadcasted a public service announcement on television entitled "Do not look at employment abroad through rose-colored glasses" throughout Ukraine and ran a parallel billboard campaign. The national government spent approximately \$53,465 for printing and distributing materials for raising awareness, and local governments made additional contributions to prevention activities. For the past three years, Ukraine's National Academy of Defense has conducted, jointly with IOM, anti-trafficking classes for Ukrainian troops being deployed for international peacekeeping duties. During the reporting period, the Ministry of Interior worked with Interpol to prevent known child sex tourism offenders from entering Ukraine.

Recommended measures to ensure that the country continues to fully comply with Minimum Standards:

-- Implement or support some form of visible awareness campaign that educates the clients of the sex trade (and potential sex trafficking victims), and/or a campaign that targets those who form the demand for victims of forced labor (and potential victims) about the nature of forced labor.

15. Corruption and Official Complicity: The government should vigorously investigate, prosecute, convict, and sentence public officials who participate in or facilitate TIP, and take all appropriate measures against officials who condone such trafficking.

(A) This should include nationals of the country who are deployed abroad as part of a peacekeeping or other similar mission who engage in or facilitate severe forms of trafficking in persons or exploit victims of such trafficking.

(B) The government must provide data regarding such investigations, prosecutions, convictions, and sentences, or it shall be presumed not to have vigorously investigated, prosecuted, convicted, or sentenced such acts.

Implementation Principle: Governments, consistent with their capacity to do so, must provide full comprehensive data on actions taken against TIP related complicity. Information on general government corruption does not satisfy this minimum standard, except in cases in which specific cases of complicity are not reported by the government or known to the USG, but where there is a reasonable probability of such complicity within the wider

context of generalized corruption in that country.

COMPLIANCE: Despite widespread reports of trafficking-related corruption, Ukraine failed to demonstrate any efforts to vigorously investigate, prosecute, convict, or sentence government officials complicit in trafficking this year.

Recommendations for measures to ensure that the country fully complies with Minimum Standards:

-- Vigorously investigate and (criminally) prosecute trafficking-related corruption at all levels of law enforcement. Share data on investigations, prosecutions, and convictions of complicit officials, and the lengths of sentences imposed on those convicted, if specific cases of complicity have occurred.

--Consider development of actions that show political will to fight trafficking-related corruption such as: an anonymous mechanism for reporting trafficking-related corruption, vetting for officials combating human trafficking, and/or a strong public statement against trafficking-related corruption.

End Action Guide and internal numbering.

16. The Department appreciates Post's continued efforts to address trafficking in persons issues.
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